

MAY - 8 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of

Communications Assistance for
 Law Enforcement Act

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CC Docket No. 97-213

To: The Commission

COMMENTS OF AT&T CORP.

On April 20, 1998, the Federal Communications Commission ("Commission") released a Public Notice¹ requesting comment on, among others things, the March 30, 1998 Petition for Extension of Compliance Date filed by AT&T Wireless Services Inc. ("AWS"), Lucent Technologies Inc. ("Lucent"), and Ericsson Inc. ("Ericsson") (hereinafter, "AWS Petition"), pursuant to the Communications Assistance for Law Enforcement Act ("CALEA"). Specifically, the Commission seeks comment on how the October 25, 1998, CALEA compliance date might be extended not just for AWS but for all of industry.²

¹ Public Notice, DA 98-762, In the Matter of Communications Assistance for Law Enforcement Act, CC Docket No. 97-213 (released April 20, 1998) (the "Public Notice").

² The Public Notice also seeks comments at a later date on issues raised in other petitions, including the Petition for Rulemaking by the Cellular Telecommunications Industry Association ("CTIA"), filed July 16, 1997 ("CTIA Petition"); Petition for Rulemaking under Sections 107 and 109 by the Center for Democracy and Technology ("CDT"), filed March 26, 1998 ("CDT Petition"); Joint Petition for Expedited Rulemaking by the Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI")(collectively, "DOJ"), filed March 27, 1998 ("DOJ Petition"); and the Petition for Rulemaking by the Telecommunications Industry Association ("TIA"), filed April 2, 1998 ("TIA Petition") (collectively the "Petitions"), and the Joint Motion to Dismiss CTIA's July 16, 1997 Petition for Rulemaking, filed by the DOJ on March 27, 1998 ("Motion to Dismiss").

AT&T Corp., for itself and AWS (collectively "AT&T"), pursuant to Section 1.405 of the Commission's Rules, 47 C.F.R. §1.405, hereby submits its Comments and applauds the Commission for taking this timely action to consider the most efficient way to grant an industry-wide extension. AT&T urges the Commission to use its authority under Section 107 of CALEA to grant an industry-wide extension of the October 25, 1998, compliance deadline for meeting the assistance capability requirements of Section 103, to be effective upon completion and promulgation of the final standard.

There is no dispute that CALEA-compliant hardware and software currently is not available and will not be available until there is resolution of the standards dispute now before the Commission. This is the case throughout AT&T, for all affected wireless and wireline business units, and for all carriers across the industry.³ Thus, there is no reason for the Commission to wait to issue an order extending the compliance date for all carriers.

In its petition, DOJ has urged the Commission to require that industry proceed to implement JSTD-025 with a short extension of time while the Commission sorts through the legal and technical issues presented by the Petitions.⁴ AT&T does not support this bifurcated approach because it significantly increases costs associated with compliance. AT&T understands that adding punch list features after the development and implementation of JSTD-025 can significantly increase costs. AT&T notes that had the FBI worked with industry to resolve this issue in July 1997 at the time CTIA filed its petition on the standard, it is likely that there would

³ The AWS Petition sets forth in detail that AWS meets the fundamental grounds for an extension under Section 107(c): the inability to meet the compliance date with commercial technology available within the compliance period. 47 U.S.C. § 1006(c)(2). With the industry standard now before the Commission, both of AWS's primary vendors, Lucent and Ericsson, have made it clear that compliant technology will not be available until at least two years after resolution of the dispute. AWS Petition at 5. On the record before the Commission, and under CALEA, AWS is entitled to an immediate extension, effective October 25, 1998, without further delay. AT&T believes that all other carriers are similarly situated.

⁴ DOJ Petition at 4.

have been minimal delay and little additional development cost to carriers and their subscribers. The potential for increased costs if the Commission chooses a bifurcated approach to resolving this issue may make compliance not reasonably achievable, even if the Commission grants an extension of time to meet both obligations.

I. INDUSTRY HAS DEMONSTRATED THAT IT IS ENTITLED TO AN EXTENSION OF THE CALEA DEADLINE

The Commission already has received extensive comments on the inability of carriers to meet the CALEA compliance deadline. In response to the Commission's Notice of Proposed Rulemaking on implementation of Section 105 of CALEA,⁵ the comments and reply comments submitted by carriers and trade associations overwhelmingly affirm that carriers are unable to meet the October 25, 1998 compliance deadline.⁶ This is no surprise because over nine months ago, CTIA informed the Commission of the need for an extension of the compliance deadline

⁵ In the Matter of Communications Assistance for Law Enforcement Act, CC Docket No. 97-213, Notice of Proposed Rulemaking, FCC 97-356 (released October 10, 1997) ("CALEA NPRM").

⁶ Comments of the American Mobile Telecommunications Association, filed December 12, 1997, p. 8; Comments of the Ameritech Operating Companies, filed December 12, 1997, pp. 8-10; Comments of AT&T Corp., filed December 12, 1997, pp. 27-28; Comments of Bell Atlantic Mobile, Inc., filed December 12, 1997, pp. 8-9; Comments of BellSouth Corporation, filed December 12, 1997, pp. 18-19; CTIA Comments at 6-8; Comments of GTE Service Corporation, filed December 12, 1997, p. 14; Comments of Motorola, Inc., filed December 12, 1997, p. 11; Comments of Nextel Communications, Inc., filed December 12, 1997, pp. 15-16; Comments of Omnipoint Communications, Inc., filed December 12, 1997, p. 8; Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies, filed December 12, 1997, pp. 6-8; Comments of Paging Network, Inc., filed December 12, 1997, pp. 13-15; Comments of the Personal Communications Industry Association, filed December 12, 1997, pp. 3-6; Comments of PrimeCo Personal Communications, L.P. ("PrimeCo") filed December 12, 1997, pp. 5-6; Comments of the Rural Telecommunications Group, filed December 12, 1997, pp. 6-7; Comments of SBC Communications Inc., filed December 12, 1997, p. 24; 360 Communications Company, filed December 12, 1997, pp. 7-8; Comments of United States Cellular Corporation, filed December 12, 1997, pp. 13-14; Comments of the United States Telephone Association, filed December 12, 1997, pp. 13-14; Comments of U S WEST, Inc., filed December 12, 1997, p. 30; Reply Comments of AirTouch Communications, Inc., filed February 11, 1998, pp. 9-12; Reply Comments of ICO Services Limited, filed February 11, 1998, pp. 3-4.

given the delay in promulgation of the industry standard due to FBI capability demands.⁷ As CTIA noted then, manufacturers required no less than 18 months to develop technology once there is a standard in place with testing and installation generally adding another six months to the timetable.⁸

Now the Commission is faced with multiple petitions seeking essentially the same thing CTIA asked for last year -- clarification of the assistance capability obligations of carriers. CDT has challenged the standard because it believes the standard provides certain capabilities that go beyond the scope of the Section 103 requirements and fails to protect the privacy of communications not authorized to be intercepted. DOJ and the FBI claim the industry standard is "deficient" because industry failed to incorporate the FBI "punch list." TIA then filed its petition seeking protection for carriers and manufacturers while the standards dispute was pending resolution at the Commission. TIA stressed that carriers would not be able to achieve compliance until at least 24 months from issuance of a final standard.⁹ Following on the heels of the TIA Petition, the three major trade associations -- CTIA, PCIA and USTA -- renewed CTIA's earlier request for an industry-wide extension based on the uncertainty about the industry standard and the absence of available technology.¹⁰ All of these petitions -- including the DOJ Petition -- recognize and validate the need for and appropriateness of an industry-wide extension for 18 months to at least two years after completion of the standard.

⁷ CTIA Petition at 2-3.

⁸ CTIA Petition at 17.

⁹ TIA Petition at 6-8.

¹⁰ Response to Petition for Rulemaking by CTIA, PCIA and USTA, filed April 9, 1998 ("Joint Industry Response"), pp. 11-12

Individual carriers have followed the lead of AWS and have filed similar petitions for extensions, including specific requests from Powertel, Inc.,¹¹ PrimeCo Personal Communications, L.P.,¹² Ameritech,¹³ and USTA.¹⁴ Each petition justifies its extension request on the same grounds--that there is and will be no commercially available technology that will permit carrier compliance in the next two years.

II. THE COMMISSION HAS THE AUTHORITY TO EXTEND THE CALEA COMPLIANCE DATE FOR ALL CARRIERS

In the Public Notice, the Commission asks that carriers address how the Commission can most quickly and efficiently extend the compliance deadline if it appears the factors supporting an extension apply equally to large numbers of telecommunications carriers. In view of the extensive record reviewed above, the Commission can and should find that an omnibus extension is warranted because CALEA-compliant technology is not available within the compliance period for any carrier or any part of a carrier's business.¹⁵

AT&T urges the Commission to exercise its existing authority under CALEA to grant such an industry-wide extension. Without an extension, carriers will have no prudent alternative but to file individual extension requests in an effort to forestall enforcement actions in federal

¹¹ Petition for an Extension of Time to Comply with the Capability Requirements of Section 103 of CALEA by Powertel, Inc. ("Powertel"), filed April 23, 1998 ("Powertel Petition").

¹² Petition for an Extension of CALEA's Assistance Capability Compliance Date by PrimeCo Personal Communications, L.P. ("PrimeCo"), filed April 21, 1998.

¹³ Petition for Extension of time by Ameritech, filed April 24, 1998 ("Ameritech Petition").

¹⁴ Petition for Extension of Compliance Date by USTA, filed April 24, 1998 ("USTA Petition"). The USTA Petition was filed on behalf of its 1,000 carrier members.

¹⁵ This is not to say that the government business of wiretapping is at a standstill. Carriers routinely implement lawfully authorized electronic surveillance and cooperate with law enforcement at all levels in that regard. While certain features make certain types of wiretaps more difficult, there is no question that the vast majority of requested wiretaps -- both digital and analogue, both wireless and wireline -- are performed today and will continue to be in the future.

court by the Attorney General, a process that already has begun. The Commission will be inundated with petitions and carriers and their vendors will be put to a substantial and unnecessary burden in the preparation and submission of requests.

Certainly, under Section 107(c), the Commission has the authority to grant *individual* carriers an extension of up to two years from October 25, 1998, based on the absence of CALEA-compliant technology. As noted above, a number of carriers already have filed extension petitions under this section of CALEA and more petitions can be expected unless the Commission acts quickly. There is no reason why the Commission must wait to act. If it can act on petitions individually, it can act in the aggregate when the single factor affecting compliance is the same for all carriers -- the absence of CALEA-compliant technology due to the absence of a stable industry standard. No carrier, and no part of a carrier's business, can comply with CALEA today.

But the better approach for the Commission is to take action under Section 107(b), which provides that the Commission may, by rule, provide for a reasonable time and conditions for compliance with and transition to any new standard that may result from the Commission's action on the Petitions. If the Commission relies solely on Section 107(c) petitions, as the FBI has suggested in its CALEA NPRM comments,¹⁶ granting extensions piecemeal and of differing duration could have an anti-competitive impact on the industry as some carriers will be required to meet CALEA at substantial cost sooner or later than others.¹⁷ The Commission should strive to maintain the status quo ante where all carriers have the obligation to meet CALEA at the same

¹⁶ See Reply Comments of the Federal Bureau of Investigation Regarding Implementation of the Communications Assistance for Law Enforcement Act, filed February 11, 1998, at 6, 8-11.

¹⁷ While AT&T favors the use of Section 107(b) for a blanket extension, if the Commission feels compelled to act on individual petitions, it could streamline the process by requiring only a carrier certification that it is in consultation with the manufacturer of its telecommunications equipment as required by Section 106 and that at least a two year extension is required due to the absence of CALEA-compliant equipment. The extension could be approved upon filing without further action by the Commission, effective October 25, 1998. The extension would apply to all of the carrier's business covered by CALEA.

time. By using its powers under Section 107(b) to grant a uniform extension, the Commission will further ensure a level, pro-competitive playing field.¹⁸

The grant of a blanket extension to similarly situated carriers to avoid the administrative burden of filing and granting individual petitions is not without Commission precedent. In the recent radiofrequency emissions proceedings, the Commission eliminated the need for the filing and granting of individual extension requests following a delay in the issuance of guidelines for carriers and extended the compliance deadline for all carriers an additional eight months.¹⁹ A further extension of the compliance date in this same proceeding was granted to all carriers after guidelines had to be revised to include clarifications requested by carriers.²⁰ The reasoning used there by the Commission applies equally to the grant of a blanket extension for CALEA compliance here where standards remain uncertain and all carriers and the Commission will face administrative burden of potentially more than 3000 extension requests unless a blanket extension is granted.

In sum, AT&T supports the proposal of the four major industry associations -- CTIA, PCIA, USTA and TIA -- to toll CALEA compliance until the requirements are decided by the Commission and for two years after final promulgation of any revised standard.²¹ Section 107(b) provides clear authority for such Commission action.²²

¹⁸ This also is consistent with the Commission's obligations under Section 107(b)(4) to serve the policy of the United States to encourage the provision of new technologies and services to the public.

¹⁹ In the Matter of Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, First Memorandum Opinion and Order, 11 F.C.C. Rcd 17512, 17515-6 (1996).

²⁰ In the Matter of Procedures for Reviewing Requests for Relief from State and Local Regulations Pursuant to Section 332(c)(7)(b)(v) of the Communications Act of 1934, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 97-303, released August 25, 1997.

²¹ Joint Industry Response at 11-12; TIA Petition at 4.

²² The Commission can act pursuant to Section 301 of CALEA, 47 U.S.C. § 229(a), or Section 4(i) of the Communications Act, 47 U.S.C. § 154(i), to promulgate the necessary extension rule.

III. AT&T OPPOSES DOJ'S BIFURCATED APPROACH TO EXTENSION

In its petition, DOJ has urged the Commission to require that industry proceed to implement JSTD-025 with a short extension of time while the Commission sorts through the legal and technical issues presented by the Petitions.²³ AT&T does not support this bifurcated approach because it significantly increases costs associated with compliance. AT&T understands that adding punch list features after development and implementation of JSTD-025, if any are approved by the Commission, will significantly increase the development and implementation costs of CALEA-compliant technology as vendors essentially have to dedicate engineers and resources twice to the same project.

If DOJ's approach is seriously considered by the Commission, AT&T urges that the Commission require vendors to disclose all costs associated with bifurcated development so that the Commission can make an informed decision about this approach. To that end, the Commission is charged by Congress in Section 107 proceedings to ensure that its final rule meets the assistance capability requirements of Section 103 *by cost effective methods* and that the Commission minimize the impact of CALEA compliance on ratepayers.²⁴

²³ DOJ Petition at 4.

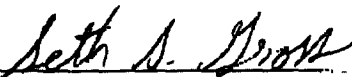
²⁴ 47 U.S.C. § 1006(b)(1) & (3).

IV. CONCLUSION

AT&T urges the Commission to act promptly to extend the October 25, 1998 deadline for compliance with the Section 103 capability requirements. The Commission should grant carriers an extension of at least 24 months for compliance to be effective upon completion and promulgation of standards so that all carriers are given the time to complete implementation. In this way, the Commission can avoid having to expend substantial administrative resources and time in processing individual petitions for extension that would otherwise be necessary and CALEA will be implemented throughout industry on the same schedule.

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May 8, 1998

CERTIFICATE OF SERVICE

I, Rena Martens, do hereby certify that on this 8th day of May, 1998, a copy of the foregoing "Comments of AT&T Corp." was served by U.S. first class mail, postage prepaid, to the parties listed on the attached service list.


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